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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/599,364	05/07/2007	Guy William Pierce	784-117 (196342)	7389
30448	7590	12/28/2009		
AKERMAN SENTERFITTT				
P.O. BOX 3188				
WEST PALM BEACH, FL 33402-3188				
EXAMINER				
HICKS, ROBERT J				
ART UNIT		PAPER NUMBER		
3781				
NOTIFICATION DATE		DELIVERY MODE		
12/28/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ip@akerman.com

Office Action Summary

Application No.

10/599,364

Applicant(s)

PIERCE ET AL.

Examiner

ROBERT J. HICKS

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-13 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/22)
Paper No(s)/Mail Date ____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Election of Species

1. This application contains claims directed to the following patentably distinct species:
 - a. Species I, drawn to Figs. 5a-5c, plus claim 7.
 - b. Species II, drawn to Figs. 6-8, plus claim 3.
 - c. Species III, drawn to Figs. 10a, plus claim 4.
 - d. Species IV, drawn to Fig. 10c, plus claim 5.
 - e. Species V, drawn to Fig. 10b, plus claim 8.
 - f. Species VI, drawn to Figs. 9a and 9b, plus claim 6.
2. The species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species. In addition, these species are not obvious variants of each other based on the current record.
3. Species I and II are directed to related products. In the instant case, the inventions as claimed have different designs. Species I requires a foot operated pedal arranged to form a lifting of the lid with depression of the pedal, and Species II requires an opening through the side of the bin.
4. Species I and III are directed to related products. In the instant case, the inventions as claimed have different designs. Species I requires a foot operated pedal arranged to form a lifting of the lid with depression of the pedal, and Species III requires engagement members to support a liner.

5. Species I and IV are directed to related products. In the instant case, the inventions as claimed have different designs. Species I requires a foot operated pedal arranged to form a lifting of the lid with depression of the pedal, and Species IV requires a structure to support a roll of liners so that the liners can be unwound.
6. Species I and V are directed to related products. In the instant case, the inventions as claimed have different designs. Species I requires a foot operated pedal arranged to form a lifting of the lid with depression of the pedal, and Species V requires a dividing wall to separate the container into separate compartments.
7. Species I and VI are directed to related products. In the instant case, the inventions as claimed have different designs. Species I requires a foot operated pedal arranged to form a lifting of the lid with depression of the pedal, and Species VI requires a foot operating pedal to effect a lowering of the lid.
8. Species II and III are directed to related products. In the instant case, the inventions as claimed have different designs. Species II requires an opening through the side of the bin, and Species III requires engagement members to support a liner.
9. Species II and IV are directed to related products. In the instant case, the inventions as claimed have different designs. Species II requires an opening through the side of the bin, and Species IV requires a structure to support a roll of liners so that the liners can be unwound.
10. Species II and V are directed to related products. In the instant case, the inventions as claimed have different designs. Species II requires an opening through

the side of the bin, and Species V requires a dividing wall to separate the container into separate compartments.

11. Species II and VI are directed to related products. In the instant case, the inventions as claimed have different designs. Species II requires an opening through the side of the bin, and Species VI requires a foot operating pedal to effect a lowering of the lid.

12. Species III and IV are directed to related products. In the instant case, the inventions as claimed have different designs. Species III requires engagement members to support a liner, and Species IV requires a structure to support a roll of liners so that the liners can be unwound.

13. Species III and V are directed to related products. In the instant case, the inventions as claimed have different designs. Species III requires engagement members to support a liner, and Species V requires a dividing wall to separate the container into separate compartments.

14. Species III and VI are directed to related products. In the instant case, the inventions as claimed have different designs. Species III requires engagement members to support a liner, and Species VI requires a foot operating pedal to effect a lowering of the lid.

15. Species IV and V are directed to related products. In the instant case, the inventions as claimed have different designs. Species IV requires a structure to support a roll of liners so that the liners can be unwound, and Species V requires a dividing wall to separate the container into separate compartments.

16. Species IV and VI are directed to related products. In the instant case, the inventions as claimed have different designs. Species IV requires a structure to support a roll of liners so that the liners can be unwound, and Species VI requires a foot operating pedal to effect a lowering of the lid.

17. Species V and VI are directed to related products. In the instant case, the inventions as claimed have different designs. Species V requires a dividing wall to separate the container into separate compartments, and Species VI requires a foot operating pedal to effect a lowering of the lid.

The related species are distinct if: (1) the species as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect; (2) the species do not overlap in scope, i.e., are mutually exclusive; and (3) the species as claimed are not obvious variants. See MPEP § 806.05(j). Furthermore, the species as claimed do not encompass overlapping subject matter and there is nothing of record to show them to be obvious variants.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1, 2, and 9-13 appear to be generic.

There is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would

not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species to be examined even though the requirement may be traversed (37 CFR 1.143) **and (ii) identification of the claims encompassing the elected species**, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election. The applicant is given a statutory period of one (1) month to respond to the written election of species requirement.

The election of the species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the election of species requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected species.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the species unpatentable over the

prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other species.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

18. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT J. HICKS whose telephone number is (571)270-1893. The examiner can normally be reached on Monday-Friday, 8:30 AM - 5:00 PM, EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert J Hicks/
Examiner, Art Unit 3781

/Anthony Stashick/
Supervisory Patent Examiner, Art
Unit 3781